



GRAND CANYON UNIVERSITY

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July 7, 2017

Joey Ridenour, RN, MN, FAAN
Executive Director
Arizona State Board of Nursing
4747 North 7th Street, Suite 200
Phoenix, AZ 85014-3655

Dear Ms. Ridenour,

Grand Canyon University appreciates the support that Dr. Kathy Malloch and her team has given to the staff and faculty of the College of Nursing and Health Care Professions, as well as the students it serves. Of note, the three professionals with over 90 years of nursing experience that did a comprehensive review over three days in April witnessed the dedication of our faculty, the administration and university resources to student learning. The amount of fiscal resources devoted to these programs has continued to increase even as we have significantly lowered the number of students enrolled in these programs. As a testament to these improvements, the College has seen a significant increase in its End of Course Surveys (EOCS) for both the pre-licensure and APRN programs in early 2017.

When you and Dr. Malloch met with me and Dr. Radda on December 6, 2016, we agreed to meet regularly in order to avoid any potential concerns and to continue to build on the positive relationship that had been established at that time. Since that time, we believe things have been going very well. We have had honest and open discussions, and we believe the program, and our relationship, has been moving forward in a very positive direction. Dr. Malloch met with myself and the Nursing Leadership team in mid-January 2017 and discussed a plan to move forward. This plan included completion of: an Executive Summary to address deficiencies in the pre-licensure program, a Self-Study, an April 2017 site visit, and an understanding that it would take one year to fully complete all hiring, training, development of resources, and improvement of processes to ensure our mutually agreed upon goals were fully implemented. All of these efforts are continuing to make our already strong program even stronger, and align with our objective for continuous improvement in everything we do.

As you know, GCU has a rich 35-year history of nursing education through the development of highly qualified graduates that are regularly sought by many of the major hospitals and healthcare providers in Arizona. Additionally, 2016 was a tremendously positive year for our nursing program as we successfully completed a site visit and received the maximum 10-year reaccreditation from the Commission on Collegiate Nursing Education (CCNE). In addition to this tremendous accomplishment, over the course of the last year or so, the University has hosted site visits from four other major accrediting bodies who have assessed everything from the institution's academic offerings, governance and administration, mission, student records, finances and resources. The University is pleased to note that it met these comprehensive reviews with 100 percent compliance, which is a testament to the extraordinary effort that our faculty and staff put into building excellence into everything we do from an academic and operational standpoint. GCU has more than a dozen departments dedicated to ensuring compliance

with federal and state agencies, accreditation requirements and institutional compliance. In addition to CCNE, those efforts have been recognized recently by the following:

- **Higher Learning Commission (HLC):** Accreditation was reaffirmed on February 28, 2017, with no requirements for any monitoring or interim reports. This regional accreditation is the most important form of institutional accreditation in higher education. This comprehensive review occurs every 10 years.
- **Association of Theological Schools:** Granted associate membership and candidacy for accredited status. This is the highest form of specialized accreditation for theology programs.
- **Veterans Administration:** Completed 2016 annual audit with no findings on any veteran student record.
- **NCAA Athletics:** Successfully completed every stage of four-year transition to Division I and recommended by NCAA Division I Strategic Vision and Planning Committee to be moved to active Division I status beginning with the 2017-18 academic year.

In light of all of the above positive developments, combined with the absence of issues with any of the myriad regulatory bodies that oversee the University, we are extremely concerned with the now consistent disruption of our progress a few weeks in advance of the Board's regularly scheduled meetings. Specifically, we are now recognizing a consistent pattern. In our interactions with the Board staff, we set a plan. We then move ahead according to that plan and receive positive feedback about our movement, only to have a significant change in tone roughly one month prior to each Board meeting. As I am sure you remember, a year or so ago, a member of your staff, Pam Randolph, was working with our former Dean, Dr. Melanie Logue, on a regular basis and, similar to the present situation, we believed our relationship and the program were progressing in a positive direction. Again, though, similar to the current situation, about one month before the Board's next meeting, we receive two investigative reports (IR's) with roughly 40 allegations of concerns regarding our BSN program. Now, as before, we have worked together in a positive fashion with demonstrable outcomes yet, about one month before the next Board meeting, we have received information that another IR will recommend a Letter of Concern or Decree of Censure for our Family Nurse Practitioner (FNP) program. The one constant between both of these situations is the interjection of the Board's in-house lawyer into our otherwise productive and positive relationship as, like occurred in the prior situation, our understanding is that additional questions and the current IR and recommendation to the Board are all being directed by the Board's in-house lawyer.

We would appreciate a discussion of this pattern with you based upon our mutual agreement last December that we would meet as soon as possible to discuss any potential areas of concern and ensure that both the Board and GCU are working with a common set of facts and a clarity of the roles and responsibilities of the Board versus the roles and responsibilities of the University. As such, this has caught us completely by surprise, and we need to clearly understand what has occurred in the last few weeks to significantly change our otherwise productive progress and working relationship.

To highlight our above concerns, I would like to point out one example. Our understanding is that the most significant issue that has been raised presently relates to our alleged inability to secure full clinical placements for 11 of our 250 FNP students prior to the beginning of the 2017 spring semester. While 11 students were not fully placed prior to the beginning of the term, all 250 FNP students received a placement and met the required 150 hours during the spring term. The Board has no documented rule or criteria requiring that students be fully placed in a clinical before the beginning of a term, yet we are now being told that an Investigative Report will be presented to the Board with the representation that

this is a requirement, and given the option of punishing GCU with either a Letter of Concern or Decree of Censure. All of this, in spite of the fact that every single FNP student received a full clinical placement during the course of the 2017 spring semester and completed all required clinical hours successfully by the end of the semester. Given that there is no rule requiring that students be placed in advance of a semester and given that these students were not delayed in their progress, we fail to understand how this could be viewed as any sort of violation of Board rules, much less presented to the Board for consideration as a Letter of Concern or Decree of Censure.

This one example, unfortunately, is indicative of the pattern of unfair attacks that have now become commonplace against the University by the Board. This is extremely problematic and needs to be discussed at a higher level before the Board's next meeting on July 20, 2017. In particular, this is just one example, amongst many others, that establishes the foundation for the University to take legal action against the Board. The University has virtually no record of litigation, either against it or initiated by it, however, after repeated attempts to work cooperatively with the Board, it unfortunately appears that the University may have no other means available to resolve these types of continued egregious attacks by the Board against the University.

Please note that as part of this potential litigation against the Board, the University will seek reimbursement for the significant financial damages that it has incurred as a result of the Board's illegal actions against the University. The University has maintained records of the significant financial resources that have been devoted to the defense of these unfounded attacks over the last few years as well as the reputational damages that have occurred as the result of the article published by The Arizona Republic regarding the Decree of Censure issued by the Board in the fall of 2016. As you know, in less than two years, eight nursing colleges in the State of Arizona received either a Decree of Censure or, worse, probation from the Board and, yet, The Arizona Republic only reported on one - GCU. Not only did The Arizona Republic report on GCU's Decree of Censure while not ever before covering another nursing program in the State, it published its defamatory article against the University on the front page of the Sunday edition of the paper on April 9, 2017. I can assure you, if the Board issues another Letter of Concern or Decree of Censure against the University, that The Arizona Republic will write another defamatory article about the University. Similar to the last article, the premise of the story will be based upon the illegal actions taken against the University by the Board and, again, we will seek significant damages against the Board for the reputational damage caused by this egregious conduct.

We also want to remind you that these attacks against the University began when a prior member of the Board staff took negative actions against the College of Nursing as a result of her admitted bias against the University. As you remember, this individual was so disruptive that she had to be removed by CCNE staff members when they were conducting their site visit at the University's College of Nursing. That individual has been removed from the Board staff, however, the lingering effects of her actions remain.

As we work through these discussions we also want to request a process change in how the Board receives and processes complaints. Our experience under the current process is as follows. Any individual is entitled to file a complaint, whether it is a student, faculty member, or unrelated third party. Once the complaint is received by the Board, regardless of merit or documented evidence to support the complaint, a formal investigation is launched into the university. The university is notified of the complaint and the investigation and asked to provide a written response. Subsequently, the results of the investigation by the Board staff are formalized in an Investigative Report that the university is entitled to see for the first time only weeks prior to a Board meeting. Even complaints that are unsubstantiated are included in the Investigative Report as "Potential Violation of Law and or Rules,"

which triggers an immediate assumption of wrongful doing or an infraction of law or rules. The Investigative Report will note all complaints that were received, whether substantiated or not, and contain a recommendation to the Board to either pursue a Letter of Concern, Decree of Censure, or Probation. The university is provided notice that it will receive 5 minutes to argue its case at the Board meeting, after which Board members are asked to vote on the punishment that the university will receive. The university must dedicate significant time and financial resources in defending every complaint that the Board receives. All of this leaves the university scrambling, with little time to defend itself, while literally being presumed guilty unless it can prove its innocence during the 5 minute allotted time period at the Board meeting. This process is indicative of a pattern of unprofessional conduct by the Board and the lack of proper due process.

Contrast the above identified process with other state agencies where complainants are required to work through the university's internal appeals process before an investigation is opened into the matter. This gives both the university and the complainant the opportunity to resolve any concerns before the agency uses its own financial and human resources to investigate every claim. It also ensures that communication between the constituent and the university occurs instead of putting the agency in the middle.

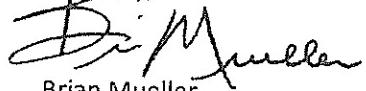
While we appreciate the support that the staff at the Arizona Board of Nursing has provided the College of Nursing under Dr. Malloch's leadership, we remain extremely concerned about the overall political environment that seems to dominate the Board's actions. We are perplexed at the significant involvement, at the last minute, of the Board's in-house counsel, who seems to regularly interrupt our otherwise productive working relationship, particularly in light of A.R.S. §41-192(D) which prohibits Arizona state agencies from employing their own legal counsel. I am attaching a copy of this statute to this letter so that you are aware that the advice the Board is relying upon by its in-house counsel is not proper under Arizona law.

We also believe that the Board is exceeding its statutory authority to regulate accredited nursing colleges under A.R.S. §32-1644. I am attaching a copy of this statute to this letter so that you are aware of the statutory limitations of the Board in regulating accredited nursing colleges in the State of Arizona. None of the current complaints against the University have anything to do with patient safety and, as such, should properly be resolved between the University and the complainant. As you know, in higher education, the customer is not always right. The University's nursing programs are extremely difficult programs and students will struggle and some will even fail. Furthermore, the University places high expectations on its faculty members to teach our nursing students at the highest level to ensure they are prepared for the demanding nature of the nursing profession. By attacking the University and its College of Nursing relentlessly over the last few years, the Board has emboldened students who are anxious, or who may be struggling in the program, to complain to the Board. While we are pouring significant time and resources into every student in an effort to ensure their success, we understand, and the Board should too, that not every student will have a successful experience.

Notwithstanding all of the above, we have experienced a very professional working relationship with the current Board Staff and we hope to continue the positive forward movement we have been experiencing. However, in light of our above concerns and the significant damages that the University will incur if the Board staff proceeds with its proposed Investigative Report and recommendation to the Board of a Letter of Concern or Decree of Censure, the University will be left with no alternative but to formally proceed with its own legal remedies in order to defend itself against these meritless attacks.

Please let me know your earliest convenience to meet regarding this matter.

Sincerely,



Brian Mueller
President

PHOTO: MANDY ALLEN/WHITEHOUSE

A.R.S. §41-192

41-192. Powers and duties of attorney general; restrictions on state agencies as to legal counsel; exceptions; compromise and settlement monies

- A. The attorney general shall have charge of and direct the department of law and shall serve as chief legal officer of the state. The attorney general shall:
1. Be the legal advisor of the departments of this state and render such legal services as the departments require.
 2. Establish administrative and operational policies and procedures within his department.
 3. Approve long-range plans for developing departmental programs therein, and coordinate the legal services required by other departments of this state or other state agencies.
 4. Represent school districts and governing boards of school districts in any lawsuit involving a conflict of interest with other county offices.
 5. Represent political subdivisions, school districts and municipalities in suits to enforce state or federal statutes pertaining to antitrust, restraint of trade or price-fixing activities or conspiracies, if the attorney general notifies in writing the political subdivisions, school districts and municipalities of the attorney general's intention to bring any such action on its behalf. At any time within thirty days after the notification, the political subdivisions, school districts and municipalities, by formal resolution of its governing body, may withdraw the authority of the attorney general to bring the intended action on its behalf.
 6. In any action brought by the attorney general pursuant to state or federal statutes pertaining to antitrust, restraint of trade, or price-fixing activities or conspiracies for the recovery of damages by this state or any of its political subdivisions, school districts or municipalities, in addition to the attorney general's other powers and authority, the attorney general on behalf of this state may enter into contracts relating to the investigation and prosecution of such action with any other party plaintiff who has brought a similar action for the recovery of damages and with whom the attorney general finds it advantageous to act jointly or to share common expenses or to cooperate in any manner relative to such action. In any such action, notwithstanding any other laws to the contrary, the attorney general may undertake, among other things, to render legal services as special counsel or to obtain the legal services of special counsel from any department or agency of the United States, of this state or any other state or any department or agency thereof or any county, city, public corporation or public district in this state or in any other state that has brought or intends to bring a similar action for the recovery of damages or their duly authorized legal representatives in such action.
 7. Organize the civil rights division within the department of law and administer such division pursuant to the powers and duties provided in chapter 9 of this title.
 8. Compile, publish and distribute to all state agencies, departments, boards, commissions and councils, and to other persons and government entities on request, at least every ten years, the Arizona agency handbook that sets forth and explains the major state laws that govern state agencies, including

Final version prepared

information on the laws relating to bribery, conflicts of interest, contracting with the government, disclosure of public information, discrimination, nepotism, financial disclosure, gifts and extra compensation, incompatible employment, political activity by employees, public access and misuse of public resources for personal gain. A supplement to the handbook reflecting revisions to the information contained in the handbook shall be compiled and distributed by the attorney general as deemed necessary.

B. Except as otherwise provided by law, the attorney general may:

1. Organize the department into such bureaus, subdivisions or units as he deems most efficient and economical, and consolidate or abolish them.
2. Adopt rules for the orderly conduct of the business of the department.
3. Subject to chapter 4, article 4 of this title, employ and assign assistant attorneys general and other employees necessary to perform the functions of the department.
4. Compromise or settle any action or claim by or against this state or any department, board or agency of this state. If the compromise or settlement involves a particular department, board or agency of this state, the compromise or settlement shall be first approved by the department, board or agency. If no department or agency is named or otherwise materially involved, the approval of the governor shall be first obtained.
5. Charge reasonable fees for distributing official publications, including attorney general legal opinions and the Arizona agency handbook. The fees received shall be transmitted to the state treasurer for deposit in the state general fund.

C. The powers and duties of a bureau, subdivision or unit shall be limited to those assigned by law to the department.

D. Notwithstanding any law to the contrary, except as provided in subsections E and F of this section, no state agency other than the attorney general shall employ legal counsel or make an expenditure or incur an indebtedness for legal services, but the following are exempt from this section:

1. The director of water resources.
2. The residential utility consumer office.
3. The industrial commission.
4. The Arizona board of regents.
5. The auditor general.
6. The corporation commissioners and the corporation commission other than the securities division.
7. The office of the governor.

8. The constitutional defense council.

9. The office of the state treasurer.

10. The Arizona commerce authority.

E. If the attorney general determines that he is disqualified from providing judicial or quasi-judicial legal representation or legal services on behalf of any state agency in relation to any matter, the attorney general shall give written notification to the state agency affected. If the agency has received written notification from the attorney general that the attorney general is disqualified from providing judicial or quasi-judicial legal representation or legal services in relation to any particular matter, the state agency is authorized to make expenditures and incur indebtedness to employ attorneys to provide the representation or services.

F. If the attorney general and the director of the department of agriculture cannot agree on the final disposition of a pesticide complaint under section 3-368, if the attorney general and the director determine that a conflict of interest exists as to any matter or if the attorney general and the director determine that the attorney general does not have the expertise or attorneys available to handle a matter, the director is authorized to make expenditures and incur indebtedness to employ attorneys to provide representation or services to the department with regard to that matter.

G. Any department or agency of this state authorized by law to maintain a legal division or incur expenses for legal services from funds derived from sources other than the general revenue of the state, or from any special or trust fund, shall pay from such source of revenue or special or trust fund into the general fund of the state, to the extent such funds are available and upon a reimbursable basis for warrants drawn, the amount actually expended by the department of law within legislative appropriations for such legal division or legal services.

H. Appropriations made pursuant to subsection G of this section shall not be subject to lapsing provisions otherwise provided by law. Services for departments or agencies to which this subsection and subsection F of this section are applicable shall be performed by special or regular assistants to the attorney general.

I. Notwithstanding section 35-148, monies received by the attorney general from charges to state agencies and political subdivisions for legal services relating to interagency service agreements shall be deposited, pursuant to sections 35-146 and 35-147, in an attorney general agency services fund. Monies in the fund are subject to legislative appropriation and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

J. Unless otherwise provided by law, monies received for and belonging to the state and resulting from compromises and settlements entered into pursuant to subsection B of this section, excluding restitution and reimbursement to state agencies for costs or attorney fees, shall be deposited into the state treasury and credited to the state general fund pursuant to section 35-142. Monies received for and belonging to the state and resulting from a compromise or settlement are not considered custodial, private or quasi-private monies unless specifically provided by law. On or before January 15, April 15, July 15 and October 15, the attorney general shall file with the governor, with copies to the director of the department of administration, the president of the senate, the speaker of the house of

representatives, the secretary of state and the staff director of the joint legislative budget committee, a full and complete account of the deposits into the state treasury made pursuant to this subsection in the previous calendar quarter. For the purposes of this subsection, "restitution" means monies intended to compensate a specific, identifiable person, including this state, for economic loss.

A.R.S. §32-1644

32-1644. Approval of nursing schools and nursing programs; application; maintenance of standards

- A. The board shall approve all new prelicensure nursing, nurse practitioner and clinical nurse specialist programs pursuant to this section. A postsecondary educational institution or school in this state that is accredited by an accrediting agency recognized by the United States department of education desiring to conduct a registered nursing, practical nursing, nurse practitioner or clinical nurse specialist program shall apply to the board for approval and submit satisfactory proof that it is prepared to meet and maintain the minimum standards prescribed by this chapter and board rules.
- B. The board or its authorized agent shall conduct a survey of the institution or program applying for approval and shall submit a written report of its findings to the board. If the board determines that the program meets the requirements prescribed in its rules, it shall approve the applicant as either a registered nursing program, practical nursing program, nurse practitioner program or clinical nurse specialist program in a specialty area.
- C. A nursing program approved by the board may also be accredited by a national nursing accrediting agency recognized by the board. If a prelicensure nursing program is accredited by a national nursing accrediting agency recognized by the board, the board does not have authority over it unless any of the following occurs:
1. The board receives a complaint about the program relating to patient safety.
 2. The program falls below the standards prescribed by the board in its rules.
 3. The program loses its accreditation by a national nursing accrediting agency recognized by the board.
 4. The program allows its accreditation by a national nursing accrediting agency recognized by the board to lapse.
- D. From time to time the board, through its authorized employees or representatives, may resurvey all approved programs in the state and shall file written reports of these resurveys with the board. If the board determines that an approved nursing program is not maintaining the required standards, it shall immediately give written notice to the program specifying the defects. If the defects are not corrected within a reasonable time as determined by the board, the board may take either of the following actions:
1. Approve the program but restrict the program's ability to admit new students until the program complies with board standards.
 2. Remove the program from the list of approved nursing programs until the program complies with board standards.
- E. All approved nursing programs shall maintain accurate and current records showing in full the theoretical and practical courses given to each student.

F. The board does not have regulatory authority over the following approved nurse practitioner or clinical nurse specialist programs unless the conditions prescribed in subsection C are met:

1. A nurse practitioner or clinical nurse specialist program that is part of a graduate program in nursing accredited by an agency recognized by the board if the program was surveyed as part of the graduate program accreditation.
2. A nurse practitioner or clinical nurse specialist program that is accredited by an agency recognized by the board.